



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 4396-99  
6 July 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board rejected your contention to the effect that the military departments must assign disability ratings without regard to the issue of fitness for military service in those cases where the service member has received a rating from the Department of Veterans Affairs. In this regard, it noted that the assignment of disability ratings by the military departments is governed by DOD Directive 1332.18, and DOD Instructions 1332.38 and 1332.39, which provide, in effect, that ratings will be assigned only in those cases where a service member has been found unfit by reason of physical disability, and then only to conditions that themselves render a service member unfit for military service. The 1972 court case you cited pertains to instructions and policies which have been long since superseded. In your case, the Board was unable to conclude that the damage to a facial nerve, varicose veins, trauma to right hand, hearing loss, sinusitis, tinnitus, or any other condition rendered you unfit for duty. In addition, it noted that you continued to perform your duties until commencing processing for retirement, which gives rise to the presumption of fitness. You did not suffer from an acute, grave illness or injury, or the deterioration of a previously diagnosed condition, which would have prevented you from performing further duty had you

not transferred to the Fleet Reserve, and would have served to rebut the presumption of fitness. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director